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C O N F I D E N T I A L SECTION 01 OF 03 PHNOM PENH 000243

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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [PHUM](#) [KTIA](#) [CB](#)
SUBJECT: KHMER ROUGE TRIBUNAL: UN FORMALIZES OWN
ANTI-CORRUPTION MECHANISM AS SOK AN MULLS OVER UN PROPOSAL

REF: A. PHNOM PENH 213
[1](#)B. PHNOM PENH 168

Classified By: AMBASSADOR CAROL A. RODLEY FOR REASONS 1.4 (B, D)

[1](#)1. (C) SUMMARY: Deputy Prime Minister and Minister of the Council of Ministers Sok An continues to deliberate over a joint anti-corruption mechanism for the Khmer Rouge Tribunal (KRT) proposed by UN Assistant Secretary General Peter Taksoe-Jensen of the UN Office of Legal Affairs (UN/OLA), after Taksoe-Jensen departed Phnom Penh April 8 saying that he no longer needed to negotiate the issue. After three days of hard talks, the single remaining difference -- deemed small by the Cambodians -- revolves around the complaint reporting mechanism. In a formal statement upon his departure, Taksoe-Jensen noted that KRT staff should be free to file complaints with either of two ethics monitors and be assured confidentiality. Sok An has insisted that a February 23 "Joint Statement" calls for parallel UN and Cambodian reporting mechanisms and continues to try to keep that proposal alive. The Ambassador called on Sok An on April 8 to urge him to take the deal offered by Taksoe-Jensen. In the meantime, the April 8 exit statement of Taksoe-Jensen outlines an interim UN-only anti-corruption mechanism with a UN-appointed Ethics Monitor -- a mid-ranking officer at the KRT. The UN-Cambodian Joint Sessions will continue to meet, but donors will have to urge more effort if we want to see the gap closed. END SUMMARY.

Taksoe-Jensen Outlines Three Sticking Points

[1](#)2. (C) In a meeting with core donors April 7, Taksoe-Jensen reviewed three items remaining in a four-page document on an anti-corruption mechanism on which agreement had almost been reached. (Post is transmitting a copy of the Taksoe-Jense proposal to the Desk, along with a Cambodian proposal, both to be kept close hold.) Earlier, in an April 5 meeting with the donors, Taksoe-Jensen had acknowledged that he would be using the February 23 "Joint Statement" as a floor from which to negotiate (Ref B) and indicated that he had already agreed with Sok An that a super-majority of the Joint Sessions would be required to recommend action on a complaint. However, there was no clear method to handle complaints when the Joint Sessions was in "deadlock". Taksoe-Jensen said that he accepted a proposal by Sok An to call in the "heavy-weights" (senior Cambodian and UN officials) in such cases. A second point was the handling of cases for which the complaining party refused to reveal their identity. In those instances, the Ethics Monitor would not make recommendations for action to the Joint Sessions, according to Taksoe-Jensen's proposal. UN KRT Deputy Director Knut Rosandhaug indicated that the main purpose of receiving such complaints was to have an open flow of information -- this would provide a sufficient deterrent effect against anyone contemplating unacceptable

behavior.

13. (C) The third and most crucial point for Taksoe-Jensen was the availability of multiple channels to file complaints. Sok An said repeatedly that Cambodians must file complaints only with the Cambodian Ethics Monitor and UN staff would go to the UN in a parallel system, he noted. Taksoe-Jensen insisted throughout the negotiation that any KRT staff member must have the freedom to choose to file a complaint with either the Cambodian or the UN Ethics Monitor. For Taksoe-Jensen, the issue was the availability of an independent third party to receive grievances, which was part of any complaints system in developed civil service systems, he explained to donors. Any complainant would also be able to request that their identity be protected in a strict system of confidentiality (to protect against retaliation). Sok An gave various interpretations to the Cambodian insistence on reporting lines going to a Cambodian Ethics Monitor, including that any other method would have a negative impact on the rest of the Cambodian government bureaucracy outside the tribunal and that a system allowing for outside reporting would only create more mistrust at the tribunal.

14. (C) This third sticking point carried forward into another negotiating session on the evening of April 7, but no agreement was reached. Sok An told Taksoe-Jensen he was still considering the UN's tabled proposal. Taksoe-Jensen told the Ambassador that he decided to stay another day because he believed that Sok An might move. In the meantime, late on April 7, the French Ambassador called on Sok An to review the bidding and to note that the two sides were close.

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Sok An Still Wary of UN Proposal

15. (C) On April 8, the Ambassador called on a relaxed but tired-looking Sok An to review his successes in the negotiation with Taksoe-Jensen and to encourage Sok An to agree to the tabled UN proposal. Sok An stated that the Cambodian proposal was better because it provided either an anonymous mechanism to file a complaint or a confidential mechanism (in parallel). KRT staff had the freedom to choose under his proposal, he noted. (NOTE: However, he could not explain how a person could have their identity protected. End Note.) On the other hand, the UN proposal would only create deeper mistrust between the UN and Cambodian staff while Sok An's proposal would help build trust at the court. At Taksoe-Jensen's request, the Ambassador outlined a proposed new feature to the UN proposal: the UN Ethics Monitor would be selected from a UN-provided list of nominees but the Cambodian government would select the monitor. Because they would be able to pick the UN Ethics Monitor, the Cambodian government could trust the system and be confident that the complaint would be shared, as noted in the agreement. A Cambodian-chosen monitor would also ensure that no frivolous complaints would be acted on, said the Ambassador. In an 80-minute discussion, Sok An kept circling back to the principles incorporated into his own proposal: confidentiality of the complaint within the Joint Sessions (NOTE: but not the identity of the whistle-blower. END NOTE.), anonymity (through a shared drop-box or similar system), and the freedom to choose between those two mechanisms. Sok An could not explain how a whistle-blower could be afforded protection when filing a complaint in good faith, if the complaint only went from Cambodian national staff to the Cambodian Ethics Monitor.

16. (C) Taksoe-Jensen had his last meeting with Sok An the afternoon of April 8 during which they reviewed their respective draft proposals. (NOTE: The Cambodian proposal dated April 8 and which we sent to the Desk appears to be a later version, different from the one delivered to the UN team. Post cannot determine if this newer proposal was

officially conveyed to the UN. END NOTE.)). However, according to UN/OLA's officer at the KRT, the Cambodian proposal continued to have the chief defect that there was no mechanism whereby any staff member could choose between two ethics monitors to make a complaint. The proposed Cambodian parallel complaints mechanism also affords no confidentiality to the individual making the complaint. An anonymous drop-box is the only other system offered. At their last meeting, Sok An and Taksoe-Jensen "explained their different mechanisms, but did not agree," according to the UN legal officer present.

RGC Public Stance: Still Negotiating

17. (C) Taksoe-Jensen told the donors that he would leave a draft anti-corruption mechanism with Sok An and that it would be up to Sok An to agree to his "last best offer". However within a day of the UN's concluding the negotiation phase, the Royal Government of Cambodia (RGC) has stated that it "never closed the door for talks," according to Phay Siphon, Secretary of State and spokesperson for the Council of Ministers. Phay Siphon told the Phnom Penh Post that "It is too early to resume talks because each side has drafts in hand to consider."

18. (C) On the afternoon of April 10, on instructions of Sok An, ECCC Acting Director Tony Kranh emailed to all the major donors "the Cambodian proposal." It is not clear if or when this proposal will be conveyed officially to the UN, as it reportedly differs in some respects from the proposal Sok An and Taksoe-Jensen discussed.

19. (C) Phay Siphon told the local press that at least one KRT donor country's ambassador has urged Taksoe-Jensen to sign the proposal offered by Sok An. (COMMENT: We believe that may be the Japanese, whose DCM told Taksoe-Jensen the Cambodians would never agree to complaints by national staff being filed to the UN. END COMMENT.) Japanese Ambassador Katsuhiko Shinohara told the Ambassador April 10 that he believed the RGC proposal merited further discussion and that Tokyo would be instructing their UN mission to deliver such a message. The Ambassador relayed that she strongly supported the Taksoe-Jensen proposal which she believed met many of the Cambodian requirements, and that she believed Taksoe-Jensen

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had negotiated in good faith.

110. (C/NF) In the meantime, Taksoe-Jensen stated that the UN will have its own UNAKRT Ethics Monitor who will receive complaints at the KRT. We understand that Senior Program Management Officer Rajeev Kumra has been named to fill that position. He has been tasked to forward all complaints received to the UN Headquarters for review and action, as appropriate. The Joint Sessions is also supposed to continue to meet on a regular basis, but we understand that no date has been set for a next meeting and that, on the Cambodian side, Chief of Public Affairs Helen Jarvis will be away for ten days.

Comment

111. (C) Taksoe-Jensen has been forthright in stating that there are certain core UN ethics principles that must be honored in a KRT anti-corruption mechanism. We agree that the UN should not go below a certain threshold and that the current Cambodian proposal does not rise to meet that limit. The Cambodian proposal is however worthy of further consideration, should it incorporate whistleblower protections and the concept of reporting grievances to third parties. It may fall to the donors to push the Cambodians to take that next step. In the meantime, the judicial process at the Khmer Rouge Tribunal continues to go ahead smoothly as Cambodian public hears revelations of the sobering tortures

exacted by Cambodians on Cambodians under interrogation
during the Khmer Rouge era.
RODLEY